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Supreme Court, U.S.
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No.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1990

ALAN MASTERS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## QUESTIONS PRESENTED

1. Are the Title 18 U.S.C. Section 1962 (RICO) elements of "pattern", "enterprise" and "conduct through the enterprise" so vague, indefinite, and uncertain as not to give notice to the average person that his contemplated conduct is prohibited by the RICO statute?

2. Is the pattern element of 18 U.S.C. Section 1962 satisfied with proof of (1) a bribery scheme between petitioner Masters and B; (2) a separate bribery scheme between petitioner Masters and C; and (3) a conspiracy between Masters, B and C to murder Masters' wife that was not connected in any way to the bribery schemes?

3. Is the enterprise element of 18 U.S.C. Section 1962 satisfied by proof of separate crimes committed by three discrete people without any evidence of structure or existence separate from the charged racketeering acts?

4. Assuming that Masters bribed B and C in separate schemes and that created a pattern of racketeering and an enterprise necessary for a successful RICO prosecution, is their conspiracy to murder Masters' wife part of the pattern, and, if so, was that conspiracy a method of conducting the affairs of the enterprise, which had no prior violent episodes and was not connected in any way to the bribery schemes?

## PARTIES TO THE PROCEEDINGS

Petitioner Alan Masters was appellant before the United States Court of Appeals for the Seventh Circuit. Respondent before this Court, the United States of America, was appellee below and commenced the prosecution against Petitioner.

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## PRAYER

Petitioner Alan Masters respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit entered in this case on February 6, 1991.

## OPINION BELOW

The opinion of the Court of Appeals is not yet published in the official reporters; the court's slip opinion is attached hereto at App. 1-11. No Petition for Rehearing was filed.

## JURISDICTION

On February 6, 1991, the United States Court of Appeals for the Seventh Circuit affirmed Petitioner's conviction (App. 12).

This Court's jurisdiction is invoked under 28 U.S.C., Section 1254.

## PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

**Constitution of the United States**

Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**18 U.S.C. Section 1961**

* * *

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

* * *

**18 U.S.C. Section 1962**

* * *

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

**18 U.S.C. Section 1963**

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years . . . or both.

and shall forfeit to the United States, irrespective of any provision of State law—

* * *

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity . . . in violation of Section 1962.

## STATEMENT OF THE CASE

Petitioner Alan Masters was an attorney practicing law in the western and southern suburbs of Chicago, Cook County, Illinois.

James Keating was a lieutenant of the Cook County Sheriff's Police who, while in the vice squad for a period of years, received $300 a month from Masters to protect one of Masters' clients from police raids.

Michael Corbitt was the Chief of Police of a southwestern Chicago suburb in Cook County, Illinois who had an arrangement with Masters to receive referral fees for clients for arrestees he referred to Masters and whom Masters represented in minor criminal matters.

Masters also, in representing certain defendants in criminal cases, told them that he needed extra money to take care of the policemen in the matter who worked in the same police department as did Corbitt and Keating but did not involve Corbitt and Keating directly.

According to the evidence adduced at trial, in late 1981 and early 1982, Masters learned his wife was having a love affair. On March 19, 1982, Mrs. Masters was seen attending a board meeting of a local college. She disappeared. Nine months later, on December 11, 1982, her body was found in the trunk of her automobile after the

car was found submerged in a shipping canal. Over six years later in July, 1988, Masters, Keating and Corbitt were indicted for a RICO conspiracy in violation of 18 U.S.C. Section 1962(c) and a RICO substantive charge under 18 U.S.C., Section 1962(b). (Corbitt was charged only with the conspiracy count.) The two counts were virtually identical and were based on the same conduct. The enterprise was alleged to have been the three defendants and the respective associations, i.e., the law practice of Masters and the two police departments with which Keating and Corbitt were associated.

The pattern of racketeering was alleged to have been (a) bribery between Keating and Masters concerning protecting Masters' bookmaking clients in Cicero, Illinois; (b) bribery between Masters and Corbitt involving remitting referral fees for the steering of arrestees from Corbitt to Masters; and (c) the solicitation, commission and concealment of the homicide of Dianne Masters. Motions to dismiss the indictment for failure to allege either a cognizable enterprise or a pattern of racketeering pursuant to the RICO statute or because of vagueness were denied.

After trial, the defendants were found guilty of each crime, but the jury found that the defendants did not murder Dianne Masters, or conceal her murder, although it found that the defendants did conspire to murder her. The jury also acquitted Masters of mail fraud, which arose out of his receiving the insurance proceeds upon his wife's death. The mail fraud was premised on the fact that Masters participated in his wife's death, and his application for the proceeds and receipt of the death benefits under those circumstances were a fraud upon the insurance company. The jury also refused to forfeit the marital house and marital property which Masters received when his wife died, even though the government contended, not-

withstanding the aforementioned acquittals, that Masters was still responsible for his wife's murder.

Although the jury, in three clear, distinct ways found that Masters did not murder his wife—(1) not finding him guilty of the racketeering act charging murder; (2) acquitting him of the two mail fraud charges premised on the fact that he defrauded the insurance company by murdering his wife and applying for and receiving the insurance proceeds, and (3) refusing to order forfeiture of the marital home and property and in doing so rejected the government's last ditch effort to find he murdered his wife—the trial court sentenced the defendant to the maximum punishment possible—40 years (two consecutive 20 year sentences) and the maximum fine of $250,000.

The United States Court of Appeals for the Seventh Circuit affirmed the convictions, finding that there was an enterprise and a pattern and that the RICO statute was not unconstitutionally vague. The Seventh Circuit remanded the conspiracy count to determine whether it fell within the new sentencing guidelines, and for the trial court to resentence on the fine. The opinion has not been published as yet but is included at App. 1-11.

## STATEMENT OF FACTS

Defendants Alan Masters, James Keating and Michael Corbitt were indicted in a four-count indictment that charged violations of 18 U.S.C. Sections 1962(c), 1962(d) and 1341.[1] (R. 1) Masters and Keating were charged in

[1] The indictment is included at App. 18-32. The last two counts involved mail fraud in obtaining death benefits through the mail and accused Masters alone. The jury acquitted him on those counts.

Count One with racketeering in violation of 18 U.S.C. Section 1962(c). (R. 1) That count alleged the existence of an association-in-fact enterprise that consisted of Masters, Corbitt, Keating, and the three entities with which the three individuals had been affiliated—the Law Offices of Alan Masters, P.C., the Willow Springs Police Department (WSPD), and the Cook County Sheriff's Police Department (CCSPD). (R. 1) Count One of the indictment further alleged that Masters and Keating conducted the affairs of the enterprise through the commission of six racketeering activities:

> (1) that Masters paid Corbitt fees for the referral of cases to Masters from October, 1970 until June, 1982, in violation of Illinois bribery law;
>
> (2) that Masters committed bribery in May 1979 in that he paid CCSPD officers (not Keating) to improperly resolve a case involving Lawrence Camerano;
>
> (3) that Masters, with Corbitt's aid, paid CCSPD officers (not Keating) in March and April, 1981 to return property to and to participate in the dismissal of charges against a Masters' client, Fred Kuhnke, in violation of Illinois bribery law;
>
> (4) that Masters paid Keating and other CCSPD officers from 1972 until 1984 to not arrest certain bookmakers in Cicero, Illinois, in violation of Illinois bribery law;
>
> (5)(a) that Masters planned and solicited the murder of Dianne Masters; that Corbitt aided and abetted the planning of the murder; and that Keating aided and abetted the solicitation and planning of the murder;
>
> (5)(b) that Masters conspired with others to murder, and procured and aided and abetted the murder;

(5)(c) that Masters, Corbitt and Keating participated in concealing the murder; and

(6) that Masters devised a scheme to defraud the Hartford Accident and Indemnity Company of the proceeds of Dianne Masters' life insurance policy. (R. 1)

Masters was named in all six of the predicate acts. Corbitt was named in only Racketeering Activities Number 1, 3, 5(a), but not as a defendant, and 5(c). Keating was named in only Number 4, 5(a), and 5(c). (R. 1)

Count Two of the indictment charged all three of the defendants with RICO conspiracy in violation of 18 U.S.C. Section 1962(d). (R. 1) Count Two incorporated the enterprise and pattern of racketeering elements set out in Count One.

A pretrial motion to dismiss the indictment as being vague, indefinite and not alleging a cognizable enterprise or pattern of racketeering was denied. App. 13-17.

**Evidence Concerning Alleged Enterprise**

The government's evidence concerning the composition and structure of the alleged RICO enterprise primarily came from FBI Agent Lary Damron. By way of background, Damron testified that, in an undercover capacity from fall, 1980 until mid-1984, he provided credit card processing services to show clubs, houses of prostitution, and escort services. (Tr. 220-22) Damron testified that he also operated messenger services that fronted for illegal bookmaking operations. (Tr. 226-28)

Damron testified that a manager of one of the show clubs, Joseph Marren, introduced him to Corbitt. (Tr. 235) Damron told Corbitt that he wished to open a messenger service in Willow Springs and wanted the protection of

Corbitt and his police department. (Tr. 240) Corbitt indicated that he would be able to work with Damron, if Damron had "an okay from the county to operate there." (Tr. 244) Damron testified that "county" referred to the Cook County Sheriff's Police Department. (Tr. 244) Damron said that he told Corbitt that he did have approval of the "county." (Tr. 245)

Damron testified that he did not open up a messenger service in Willow Springs because shortly after meeting with Corbitt, Corbitt was fired as Chief of Police of Willow Springs. (Tr. 246-47) Damron testified that Marren then suggested establishing a messenger service in Summit, where Corbitt was seeking to become Chief of Police. (Tr. 247)

Damron testified that Marren also put him in contact with Keating. Damron said that he had been paying $600 a month protection money to Marren, who had passed it on to his contact at the CCSPD. (Tr. 232-34) In July, 1982, Marren arranged to introduce Damron to his CCSPD contact. (Tr. 248)

Damron testified that he met Keating on September 3, 1982. (Tr. 250-51) Damron said that he told Keating that he wanted to open a house of prostitution in Summit and was waiting for Corbitt to become Chief of Police in Summit. (Tr. 252-53) Keating told Damron that he should not count on Corbitt becoming police chief in Summit, but that Keating knew a lawyer in Summit who might be able to help open a show club. (Tr. 253)

Damron testified that he again met with Keating on November 27, 1982. (Tr. 281-82) Keating allegedly told Damron that his attorney friend in Summit, who Keating identified to Damron as Masters, had political connections and paid off people to win cases in court. (Tr. 282-83)

Damron testified that Keating said that Masters paid referral fees to police officers, including Keating. (Tr. 283) Keating gave Damron Masters' name and telephone number and told him to contact Masters. (Tr. 284)

Damron testified that he talked to Masters on the telephone four times in December, 1982. During these conversations, which were tape recorded, Damron told Masters that he wanted to make sure that he got the necessary help for his proposed club. (Tr. 289) Damron testified that Masters said that that would not be a problem.

Damron never explicitly stated in any of the taped conversations that he wanted to open a house of prostitution or that he wanted Masters to secure police protection for an illegal business. In fact, Damron stated in a taped conversation with Keating that he only wanted Masters to represent him in Masters' capacity as an attorney. (Tr. 306) Except for the fact that Keating directed Damron to Masters, Damron did not testify about any other connection between Masters, Keating, and Corbitt.

As evidence of the relationship between Corbitt and Keating, the government introduced evidence that Corbitt acted as a conduit between CCSPD officers and one Dennis Egan. (Tr. 805-19, 1263-68) Corbitt passed money to CCSPD officers in Keating's division in exchange for returning property to Egan and not arresting Egan. (Tr. 805-07) One witness testified that Keating received some of that money. (Tr. 1267-68) Masters was not involved in this transaction.

**Racketeering Activity Number One—Referrals From Corbitt to Masters**

Racketeering Activity Number One alleged, and for the sake of this petition, the government proved, that Cor-

bitt referred cases to Masters in exchange for referral fees, in violation of Illinois bribery law. The government presented no direct evidence that Masters paid Corbitt referral fees. Instead, the government offered evidence that Masters paid referral fees to other police officers and that Corbitt referred cases to Masters. From that evidence, the government asked the jury to infer that Masters bribed Corbitt from 1970 to 1982. There was evidence that two motorists were arrested by Western Springs Police Department and that Corbitt on one occasion and another policeman on another occasion referred them to Masters to act as their attorney.

**Racketeering Activity Number Two—The Camerano Case**

Masters told an arrestee that the legal fees were needed to pay sheriff's police officers (not Keating).

**Racketeering Activity Number Three—The Kuhnke Case**

Masters told an arrestee that part of his fees were being used to pay public officials (not identified).

**Racketeering Activity Number Four—Protection of Bookmakers**

Masters paid Keating or other sheriff's policemen between $50 and $150 a month to protect Masters' clients who were bookmakers in a Chicago suburb.

**Racketeering Activity Number Five—The Murder of Dianne Masters**

1. **Relationship Between Alan Masters and Dianne Masters and Possible Divorce**

The government presented testimony from several witnesses that Masters and his wife Dianne had difficulties in their relationship.

Maureen McGann-Ryan, an attorney, testified that Dianne Masters retained her in January, 1982 to obtain a divorce. (Tr. 920) Dianne told her that she had decided that her marriage was over. (Tr. 921)

McGann-Ryan testified that Masters and other people asked her to convince Dianne to reconcile with Masters. (Tr. 940) McGann-Ryan testified that Dianne declined to do so. (Tr. 943)

Several government witnesses testified about statements Masters allegedly made concerning the potential divorce. Some witnesses said that Masters made statements they interpreted as threats against Dianne. (Tr. 682, 1035-38) Other witnesses said Dianne told them of threats Masters supposedly made toward her: that he would hurt Dianne and would never let go of their daughter; that Dianne would pay if she did not change her mind about the divorce; and that Masters would destroy Dianne. (Tr. 682, 685)

Jack Bachman, a corrupt deputy sheriff, testified that Keating told him in February 1982 that Masters told Keating that Masters was having trouble with Dianne. (Tr. 1289-90) A few days later, Keating told Bachman that Masters found out about Dianne's affair and that Masters wanted to have her killed. (Tr. 1293) (Tr. 1293-94) Keating also told Bachman that Corbitt would not kill Dianne but would get rid of the body. (Tr. 1294)

Diane Economou, a lawyer in Masters' office, testified that, in February 1982, Masters said that he was going to meet with Keating to discuss murdering Dianne. (Tr. 1039-41)

### 2. Dianne Masters' Boyfriend

James Koscielniak testified that he was a professor at Moraine Valley Community College (MVCC) in Palos Hills, Illinois. (Tr. 1118) Koscielniak testified that he met Dianne Masters when she ran for the MVCC Board of Trustees. (Tr. 1120) Koscielniak said that he attended Board meetings and that he and Dianne began to socialize in the fall of 1981, usually after Board meetings. (Tr. 1124-25) Koscielniak said that their relationship evolved into an intimate and sexual relationship beginning in December, 1981. (Tr. 1126)

Koscielniak testified that after the March 2, 1982 board meeting, a group went to a local restaurant. (Tr. 1150-51) Koscielniak testified that a man at the bar asked him if he was with the college, asked his name, and asked him what he did at the college. (Tr. 1153) Koscielniak said that he did not realize until 1988 that Keating was the man at the bar. (Tr. 1154)

### 3. Tape Recorded Conversation Concerning Sexual Activity

Koscielniak testified that in early February, 1982, he sent Dianne Masters a newspaper article that referred to descriptions of sexual activity in the Bible. (Tr. 1144-47) According to the article, one biblical passage referred to the use of wine in sexual foreplay. (Tr. 1146)

Koscielniak testified that following the Board meeting on February 24, 1982, he and Dianne and other Board members went to a local tavern. (Tr. 1151) Koscielniak said that he and Dianne then went to a motel and had sexual relations. (Tr. 1151-52)

Koscielniak testified that he talked to Dianne on the telephone the next day while she was at home. (Tr. 1147-

48) Koscielniak said that he and Dianne discussed their use of a wine bottle in their sexual relations. (Tr. 1148) Koscielniak said that he told Dianne that they should not be talking about this subject. (Tr. 1148) Koscielniak testified that Dianne once had indicated that her telephones were tapped. (Tr. 1148-49)

Theodore Nykaza, who worked for Masters as a private investigator from 1977 until 1987, testified that Masters asked Nykaza to buy some taping equipment so that Masters could learn whether his wife had a boyfriend. (Tr. 1624) Nykaza testified that he installed the equipment on both telephone lines in Masters' home in late January, 1982. (Tr. 1630-31) Nykaza went to Masters' home with CCSPD officer Joseph Hein, a friend of Masters who worked part time for Nykaza. (Tr. 1650) Nykaza said that he played the tapes with Masters and Hein present. (Tr. 1651)

Nykaza testified that he remembered one conversation with a female and male voice. (Tr. 1654-55) Nykaza recognized the female voice as Dianne's, and believed the male voice was Dianne's boyfriend. (Tr. 1654-57) Dianne and the male discussed the use of a bottle and whether Dianne was okay. (Tr. 1656-57)

Nykaza said that after listening to this tape recorded conversation, Masters became angry and said, "I'll kill that mother fucker." (Tr. 1658) Nykaza said that Masters also "talked about having a home invasion where the dogs will go, the cats will go, everything will go, including Dianne. . . ." (Tr. 1659) Nykaza said that Joe Hein was present during this time. (Tr. 1659) Nykaza testified that he destroyed the tapes in early March, 1982 at Masters' request. (Tr. 1661)

Hein testified that he was present when Nykaza played the tape recorded conversation between Dianne and a male person. (Tr. 974) Hein testified that, although Masters appeared sad and subdued after hearing the conversation, he never made any threats against Dianne while Hein was present. (Tr. 983, 1001-02) Hein said he did not remember if he left Masters' or Nykaza's presence while at Masters' house. (Tr. 982)

Although Nykaza claimed that he was not intoxicated when he listened to the tape with Masters and Hein, Nykaza admitted to a twenty-year history of alcohol abuse and related problems. (Tr. 1603, 1720-21) He admitted that he had been drinking a lot in the few days before testifying. (Tr. 1604) Nykaza stated that he had been admitted to a hospital on at least three occasions for alcohol related problems. (Tr. 1604) Specifically, Nykaza admitted that during January, February and March, 1982, he abused alcohol almost on a daily basis. (Tr. 1705-06) Nykaza admitted that when he drank, he would pass out, black out, suffer memory loss, or experience hallucinations. (Tr. 1704-05) Nykaza defined hallucinations as believing things happened that, in fact, never happened. (Tr. 1705)

Nykaza also admitted to numerous other incidents in which he deliberately lied or made false accusations. In January, 1987, Nykaza set fire to his own car and falsely told his insurance company that someone else had vandalized his car. (Tr. 1679) In October, 1983, Nykaza wrote "you'll be next" on his garage door in order to scare his wife into thinking that, since Dianne Masters had been murdered, possibly she also would be murdered. (Tr. 1680-81) In the summer of 1987, Nykaza accidentally shot himself in his finger, and Nykaza falsely told others that someone shot him. (Tr. 1605, 1688-89) In fact, Nykaza

falsely accused Masters of shooting him in the finger. (Tr. 1690)

Nykaza testified that he falsely told people that he had shot and killed several individuals when he was a Chicago police officer. (Tr. 1692) Nykaza said that he fabricated stories surrounding the purported shootings and even kept police photographs of shooting victims to use as "corroboration" of his stories. (Tr. 1693-96) Although Nykaza claimed at trial that he had never killed anyone, he admitted that others may possibly have heard him say out loud to himself "I can't kill anymore" or "I can't kill again." (Tr. 1700, 1702-03) Sheila Mikel, Nykaza's third wife, testified that she heard Nykaza say out loud that he would not kill anyone again. (Tr. 3024)

James Ross testified that he was Chief of Police in Willow Springs from July, 1982 through January, 1985. (Tr. 2513) Ross testified that the WSPD began dredging the Sanitary and Ship Canal in the fall of 1982 in order to recover automobiles that had been pushed or driven into the canal. (Tr. 2514) Ross testified that the WSPD pulled Dianne Masters' car from the canal underneath the Willow Springs Bridge on December 11, 1982, and found her body in the car's trunk. (Tr. 2518-23)

She died as a result of a blow with a blunt object to the head. Two bullet wounds, which in the opinion of the pathologist were received after death, were found in her skull.

## REASONS FOR GRANTING THE WRIT

### I.

### THE TERMS "PATTERN," "ENTERPRISE," AND "CONDUCT THROUGH THE ENTERPRISE" AS USED IN THE RICO STATUTE ARE UNCONSTITUTIONALLY VOID FOR VAGUENESS IN VIOLATION OF THE DUE PROCESS CLAUSE

Attorneys and litigants in criminal and civil cases throughout the country are seeking guidance but none is found in the interpretation and understanding of the racketeering statute known as RICO.

The terms "pattern of racketeering activity" and "enterprise" and "conduct through the enterprise" are new to the lexicon of lawyers, and no one, including members of this Court, can adequately define the terms to pass constitutional muster.

In *H.J., Inc.* v. *Northwestern Bell Telephone*, 492 U.S. ____ (1989), Justice Scalia, in a concurring opinion, admitted that he does not know what is required to show a pattern, beyond two acts of racketeering activity, and he concluded that the RICO statute is ripe for a vagueness challenge:

> No constitutional challenge to this law has been raised in the present case, and so that issue is not before us. That the highest court in the land has been unable to derive from this statute anything more than today's meager guidance bodes ill for the day when that challenge is presented.

This is that day.

The void for vagueness doctrine of the Due Process Clause "requires that a penal statute define the criminal defense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a man-

ner that does not encourage arbitrary and discriminatory enforcement." *Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). RICO's definitions of "pattern," "enterprise," and "through" fail to meet these requirements.

Due process requires that a statute must not be "so vague that men of common intelligence must necessarily guess at its meaning or application." *Smith* v. *Goguen*, 415 U.S. 566 (1974); *Grayned* v. *City of Rockford*, 408 U.S 104 (1972); *Connally* v. *General Construction Company*, 269 U.S. 385 (1926). In addition, the "statute must provide sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private conceptions." *Grayned* v. *City of Rockford*, *supra*; *Interstate Circuit, Inc.* v. *City of Dallas*, 390 U.S. 676 (1968); *Giaccio* v. *Pennsylvania*, 382 U.S. 399 (1968).

Indeed, as Justice Scalia so persuasively stated in his concurring opinion in *H.J., Inc.*, v. *Northwestern Bell Telephone Co.*, 492 U.S. ____, 106 L.Ed.2d 195 (1989), the Court's provision of more specific definitions does not clarify RICO's reach: the Court's definition of "pattern" in *H.J., Inc.* makes it "*more* rather than *less* difficult for a potential defendant to know whether his conduct is covered by RICO." 106 L.Ed.2d at 217 (emphasis in original).

We cannot add to Justice Scalia's discussion of "pattern," except to point to the "pattern" charged here. If such a hodgepodge of unrelated acts such as were charged here can be a proper RICO "pattern," then this case proves that the statute does not tell a defendant what conduct is prohibited.

The "association-in-fact enterprise" element of the statute is no less vague. If an amalgam of individuals and legal entities can be an enterprise, even though nothing

binds them but the pattern of racketeering activity, then anything could be an enterprise. Can a group of individuals and entities with no ascertainable or ongoing structure and no common purpose beyond the racketeering activity be an enterprise? The statute does not tell us.

Finally, the statute nowhere defines the "through" requirement. Particularly where the alleged enterprise is an association-in-fact, no ordinary person could understand what degree of relationship must exist between the affairs of the enterprise and pattern of racketeering activity.

This is the case that Justice Scalia envisioned in his opinion in *H.J. Inc.*, *supra*. This is the case which presents the unanswered question—where three individuals and their respective law firm and police departments are considered an enterprise and three separate, non-violent, corrupt criminal acts never involving all three persons are considered a pattern, is a conspiracy to murder one of their wives an act which shows neither continuity nor a relationship to the other acts sufficient to sustain a conviction under this amorphous statute? To ask the question is to answer it. How can a private marital problem be related to and a continuum of a bribery scheme amongst a lawyer and two policemen from two separate police departments?

Do not men of ordinary intelligence have to guess what is meant by an enterprise and more importantly a pattern? The short shrift the Seventh Circuit gave the question is demeaning and its construction is wrong. Just because the predicate acts are not vague in and of themselves does not end the inquiry. Are the separate, arguably unvague predicate state crimes a pattern? Are the persons who commit the separate, discrete, unvague state crimes thereby given notice that they are an enterprise? RICO is not just a sentencing enhancing statute, but a joinder statute

as well. It allows for the combination in one count and one trial of distinct, disparate and unrelated crimes which could not be joined in a state prosecution.[2]

For instance, in the instant case scenario, while the bribery scheme between Masters and Keating, although indictable under Illinois law, Ill.Rev.Stat., Ch. 38, Section 33-1, and the bribery scheme between Masters and Corbitt could have been so prosecuted under the same statute, and while the murder case could be prosecutable in Illinois, Ill.Rev.Stat., Ch. 38, Section 9-1, the three crimes never could have been brought together. The evidence of the murder never would have been admissible in either bribery trial nor would the bribes have been admissible in the murder trial. These activities, while illegal, were not part of an organized crime family[3] but were occasional sporadic acts of referral fees and regular payments to protect one of many legitimate clients of a law firm.

The unsupported comment by the Seventh Circuit that this was a suburban Mafia is without support in the record. *See* App. 7. The Seventh Circuit deems that, because the defendants were engaged in illegal acts, they became an organized crime family and need not have received notice that their conduct falls within the scope of the RICO statute. But that answer begs the question. These were three ostensibly legitimate persons and associations which committed criminal offenses and cannot be consid-

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[2] Illinois law allows for joinder of offenses and defendants if the offenses are part of the same comprehensive transaction. Ill.Rev. Stat., Ch. 38, Section 111-4(a) and (b).

[3] Organized crime figures are deemed to know their conduct is subject to a RICO pattern and enterprise strictures. *United States* v. *Pungitore*, 910 F.2d 1084 (3d Cir. 1990); *United States* v. *Angiulo*, 897 F.2d 1169 (1st Cir. 1990).

ered organized crime or a "Mafia" merely because of the acts committed. While murder is not a vague concept, the concept of a domestic homicide being somehow related to and a continuum of business bribery leaves a person of average intelligence guessing about whether a pattern and an enterprise exist.

Four members of this Court admit that they do not know the meaning of the "pattern" requirement. The courts' explanations of the "enterprise" and "through" requirements are widely divergent. Yet, Mr. Masters is expected to know that his conduct subjects him to consecutive 20-year prison terms for violating and conspiring to violate the statute. Because the RICO statute is vague on its face and in its application, this Court should grant the petition and reverse the conviction.

The RICO statute does little to define an association-in-fact enterprise. Decisions of this Court and of circuit courts, however, have provided some guidance as to what is and is not a RICO enterprise. In *United States* v. *Turkette*, 452 U.S. 576, 583 (1981), this Court stated that an enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct. . . . [The enterprise] is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."

In *United States* v. *Neapolitan*, 791 F.2d 489, 500 (7th Cir.), *cert. denied*, 479 U.S. 940 (1986), the Court quoted with approval the Eighth Circuit's definition of an enterprise:

> [T]he central element of an enterprise is structure. An enterprise must be more than a group of people who get together to commit a 'pattern of racketeering activity.'

> We hold that Congress intended the phrase 'a group of individuals associated in fact although not a legal entity,' as used in its definition of the term 'enterprise' in Section 1961(4), to encompass only an association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an ecomonic goal that has an existence that can be defined apart from the commission of the predicate acts constituting the 'pattern of racketeering activity.'

791 F.2d at 500 (quoting *United States* v. *Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981)). Since *Anderson*, the Eighth Circuit has explained further that the enterprise must possess an ascertainable structure distinct from the structure inherent in and necessary to the commission of the predicate acts. *See, e.g.*, *Atlas Pile Driving Co.* v. *DiCon Financial Co.*, 886 F.2d 986, 996 (8th Cir. 1989).

The frustration a citizen has when confronted with this nebulous statute is exemplified by the government's proof (or lack thereof in this case). Witness:

The government's proof in this case satisfied none of the requirements for an association-in-fact enterprise. First, the government did not establish that Masters, Corbitt and Keating and the three legal entities functioned as a continuing, cohesive unit. The government presented no evidence that the six "members" of the enterprise ever worked together to accomplish any objective. Even the predicate acts do not allege that the six members of the enterprise ever worked together. Masters and Corbitt alone were named in Racketeering Activity Number 1, relating to the payment of referral fees. Masters and unindicted others were involved in the second predicate act, relating to Camerano's case. Masters and Corbitt and un-

indicted others were connected to the Kuhnke case, the third predicate act. In Racketeering Activity Number 4, only Masters and Keating were listed. In only Racketeering Activity Number 5, relating to the murder of Dianne Masters, did the government even name all three individual defendants.

Moreover, the government never proved any *cooperative* action by the members of the enterprise. Rather, any relationships between the various members of the enterprise were arm's length, briber-bribee relationships. Masters, the government said, paid Corbitt for referring cases; Masters paid CCSPD officers relating to the Camerano and Kuhnke cases; Masters paid Keating to protect Cicero bookmakers; Masters offered to pay Keating and/or Corbitt to participate in the murder of his wife and the concealment of her death. The evidence was not of individuals functioning as a continuing, cooperative unit, as required by *Turkette* and *Neapolitan*, but of individuals in discrete one-to-one relationships engaged in discrete unrelated transactions.

Even if the government proved some ascertainable structure, the government still did not prove a structure that existed separate from that inherent in and necessary to the commission of the predicate acts. As the Eighth Circuit posed the inquiry in *Atlas Pile Driving Co.*, does the evidence show that the enterprise had an ongoing structure, once one puts aside the evidence of the predicate acts themselves? *See* 886 F.2d at 996. The answer here is no.

The government did not show any unified or continuing activity by the members of the enterprise beyond their participation in the various racketeering activities. Even the testimony of Lary Damron, which was offered to prove the structure of the enterprise, did not establish any or-

ganization separate from the racketeering activity. Damron testified to Corbitt's deference to the "county" (the CCSPD), but there was no evidence that Keating was the CCSPD officer who was to approve protection of Damron's operation. Masters, of course, was not mentioned at all. Likewise, although Keating sent Damron to Masters regarding the proposed Summit show club, there was no evidence that Keating or Corbitt would be involved if the show club ever opened. And, although the government's evidence concerning the CCSPD raid of Dennis Egan purportedly showed the involvement of both Corbitt and Keating, theirs was a briber-bribee relationship, with Corbitt paying CCSPD officers on behalf of Egan. Again, Masters was not mentioned or involved.

Not only must the enterprise have a structure that exists separate from the racketeering activity, the enterprise must have a purpose or goal distinct from the commission of the predicate crimes. *See Neapolitan*, 791 F.2d at 500. If the only goal of the enterprise is the commission of the predicate acts, then the enterprise requirement is not satisfied.

The government's evidence in this case failed to prove that the association-in-fact enterprise had any goal or purpose beyond the commission of the predicate acts. The government presented no direct evidence of any such purpose. Even the government's evidence of the defendants' conduct beyond the racketeering activity (e.g., Keating's receipt of bribes from Damron or Masters' alleged bribes to policemen) showed only broader goals of individual members of the enterprise, not of the enterprise as a unit.

In sum, the government failed to satisfy the requirements for an association-in-fact enterprise. The government did not allege or prove an ascertainable structure, ongoing organization, or a common economic goal that ex-

isted separate from the commission of the predicate acts. Yet there was a conviction and affirmance and a virtual life sentence.

## II.

## THE GOVERNMENT FAILED TO ALLEGE OR PROVE A PATTERN OF RACKETEERING MARKED BY THE REQUISITE CONTINUITY PLUS RELATIONSHIP

The government's failure to prove the enterprise element is matched only by its failure to prove the pattern element. Discussion of the pattern requirement must start with *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. ____, 106 L.Ed.2d 195 (1989). Although perhaps of dubious clarity, *see* 106 L.Ed.2d at 215-18 (Scalia, J., concurring), this Court fleshed out the definition of "pattern." The Court began with the " 'assumption that the legislative purpose is expressed by the ordinary meaning of the words used.' " 106 L.Ed.2d at 207 (quoting *Richards* v. *United States*, 369 U.S. 1, 9 (1962)). This Court then defined "pattern" as an " 'arrangement or order of things or activity.' " *Id.* (quoting 11 Oxford English Dictionary 357 (2d ed. 1989)).

The Court also relied on RICO's legislative history to explain the contours of "pattern":

> RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.

106 L.Ed.2d at 208 (emphasis in original). In other words, multiple acts must have both relationship and continuity to be a pattern.

> This Court stated that relationship exists if acts have the same or similar purposes, results, participants,

> victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

*Id.* (quoting 18 U.S.C. Section 3575(e)). Continuity exists "if the related predicates themselves involve a distinct threat of long-term racketeering activity. . . ." *Id.* at 210. And, presumably without showing a threat of future conduct, one "may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time." *Id.* at 209.

The government's major failure here was to prove any relationship between the alleged predicate acts. Racketeering Activity Number 1 charged that Masters paid Corbitt referral fees from 1970 until 1982. Except that Masters and Corbitt are named in other predicate acts, the first racketeering act has no relationship to any of the other four acts. The payment of referral fees to Corbitt did not share a similar purpose, result, victim, or method of commission with any of the other predicate acts. Even if the individual referral fees are similar to one another, that does not establish that Racketeering Activity Number 1 is related to the other predicate acts.

Racketeering Activity Number 4 also stands alone. Masters' passing of protection money from Cicero bookmakers to Keating is completely unrelated to the other predicate acts. Except that Masters and Keating are mentioned elsewhere, the fourth predicate act shares no victim, purpose, method, or result with any other predicate act. That the individual payments are similar again does not prove any relationship between that racketeering act as a whole and the other predicate acts.

Racketeering Activities Numbers 2 and 3, alleging the "fixing" of the Camerano and Kuhnke cases, are related only in that they both charged that Masters fixed cases.

However, they lack any other similarity to the other three predicate acts: no similar purpose, result, method, or victim.

The final predicate act, relating to Dianne Masters' murder, most clearly demonstrates the lack of relationship among the predicate acts. The "murder" predicate act and any of the other acts are apples and oranges: bribes versus murder; referral fees versus murder; fixing court cases versus murder. The lack of similarity could not be more obvious. Yet, by perverting the pattern element, the government deluged the jury with days and days of sensationalistic, gruesome, lurid, and thus extremely prejudicial evidence concerning conduct completely unrelated to the rest of the allegations.[4]

The government also failed to satisfy the continuity requirement. The predicate acts charged here were merely sporadic. The Camerano case occurred in 1979; the Kuhnke case was in early 1981. The planning of the murder supposedly took place in late 1981 and early 1982. The referral fee and protection money arrangements, although overlapping these dates, operated on completely independent time tables. Those arrangements began and ended for reasons totally unrelated to the other predicate acts.

The continuity requirement demands more than the sporadic activity that occurred here. Requiring proof of con-

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[4] That the same participants were involved in the "murder" predicate act and in other predicate acts does not satisfy the relationship component of the pattern requirement. If identity of participants were enough, then the government could charge one predicate act involving a group of individuals and add any number of predicate acts committed only by individual members of the group. That type of charging, which is present here, does not comport with RICO's intent. The pattern requirement is to ensure that predicate acts are connected in a purposeful manner, not just that they involve the same individuals.

tinuity guarantees that separate predicate acts are temporally related in some meaningful way. That one predicate act may continue over time, such as Masters' referral fee arrangement with Corbitt, does not prove continuity *among* the separate racketeering acts.[5] Since the government proved nothing more than that, the RICO counts must fail for lack of a proper pattern.

## III.

## THE GOVERNMENT FAILED TO SATISFY THE REQUIREMENT THAT THE DEFENDANT CONDUCTED THE AFFAIRS OF THE ENTERPRISE THROUGH OR BY MEANS OF A PATTERN OF RACKETEERING

Section 1962(c) also requires proof that the defendant conducted the enterprise's affairs *through* a pattern of racketeering activity. The government's failure to satisfy this requirement also requires reversal of the defendant's conviction.

In *United States* v. *Nerone*, 563 F.2d 836 (7th Cir. 1977), *cert. denied*, 453 U.S. 951 (1978), the Seventh Circuit defined "through" as used in Section 1962(c) in a common sense manner: "By means of, in consequence of, by reason of." 563 F.2d at 851 (quoting Black's Law Dictionary, 1652 (Rev. 4th ed. 1968)). In *Nerone*, the government alleged as the pattern certain gambling violations that occurred in a mobile home park operated by Maple Manor, Inc. *Id.* at 839. The government charged Maple Manor, Inc. as the enterprise and that the defendants conducted the affairs of Maple Manor, Inc. through commission of the

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[5] If continuity *within* a single predicate act were enough to prove a pattern, then the government could allege one such act, and then add other acts, such as here, that lack any continuity. RICO's pattern element demands more.

gambling offenses. *Id.* The Court held that, although the government proved the racketeering activity, the government did not prove that the defendants conducted the affairs of Maple Manor, Inc. by means of the gambling offenses. *Id.* at 851-52.

Here, the government's proof failed in two respects. First, the government failed to prove that the association-in-fact enterprise had any affairs separate from the pattern of racketeering activity. This requirement is essential to a Section 1962(c) allegation, because otherwise the phrase "to conduct . . . such enterprise's affairs through a pattern of racketeering activity" would be meaningless. If the affairs of the enterprise could be nothing more than the pattern, then the government would need to prove only that a person associated with the enterprise committed a pattern of racketeering activity. Section 1962(c), however, necessarily requires proof that the enterprise has affairs distinct from the pattern. *See Nerone*, 563 F.2d at 850-51 (mobile home park operator had business affairs separate from gambling operation).

Here, the government presented no evidence that its combination of three individuals, two police departments and a law office had any affairs that were unique to that particular combination. To the extent that the government presented evidence of any business or activities of the association-in-fact, that evidence related solely to the racketeering acts and not to any separate affairs.

Second, even if one could identify some independent affairs of the enterprise, the government did not prove that those affairs were conducted by means of the pattern of racketeering activity. How did the commission of the predicate acts further, accomplish, or advance anything beyond the objectives of the predicate acts themselves? Because the government's proof did not answer that question, the "through" requirement of Section 1962(c) went unsatisfied.

## CONCLUSION

Wherefore, Petitioner respectfully prays that this Honorable Court grant this Petition and issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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# APPENDIX

# IN THE
# UNITED STATES COURT OF APPEALS
# FOR THE SEVENTH CIRCUIT

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Nos. 89-2851, 89-2872, 89-2873

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

ALAN MASTERS, MICHAEL J. CORBITT, and JAMES D. KEATING,

*Defendants-Appellants.*

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Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 88 CR 500—**James B. Zagel**, *Judge.*

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ARGUED DECEMBER 14, 1990—DECIDED FEBRUARY 6, 1991

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Before BAUER, *Chief Judge*, and POSNER and KANNE, *Circuit Judges.*

POSNER, *Circuit Judge.* Alan Masters and James Keating were charged in 1988 with, among other things, having "conduct[ed an] . . . enterprise's affairs through a pattern of racketeering activity" in violation of 18 U.S.C. § 1962(c), and (along with Michael Corbitt) of having conspired to do so, in violation of § 1962(d); both are, of course, provisions of the RICO (Racketeer Influenced and Corrupt Organizations) statute. The statute provides that "enterprise" "includes any individual, partnership, corporation, association, or other legal entity, and any union or group

of individuals associated in fact although not a legal entity." § 1961(4). The statutory term "pattern of racketeering activity" "requires at least two acts of racketeering activity," § 1961(5), defined as violations of various federal and state statutes. The jury found Masters and Keating guilty on both counts and Corbitt guilty on the conspiracy count—the only one he had been charged with, because the statute of limitations had expired on his substantive violations. The judge gave Masters and Keating consecutive prison sentences of 20 and 20, and 20 and 15, years, respectively, and Corbitt 20 years. The judge also fined Masters $250,000 on the conspiracy count and ordered all three defendants to forfeit criminal proceeds of $42,000. These are all pre-Sentencing Guidelines sentences. There were other counts in the indictment besides the two RICO counts, but the jury acquitted the defendants on those counts.

There is no challenge to the jury instructions, so we must construe the facts as favorably to the prosecution as the trial record and the jury verdict permit. The facts are a lurid mixture of corruption and murder in a west suburban Chicago setting. Masters was a lawyer, Keating a lieutenant in the Cook County Sheriff's Police Department who commanded the vice squad and later the criminal investigative unit, and Corbitt the chief of police of Willow Springs. The RICO enterprise, as the government conceives it, was an informal association among the three defendants and three other entities (so a total of six in all): Masters' law firm (a professional corporation of which he was the sole shareholder and which employed another lawyer) and the two police departments. Between 1970 and June 1982, when Corbitt lost his job as chief of police of Willow Springs, Masters bribed Corbitt to refer persons arrested, ticketed, or investigated by the Willow Springs Police Department to Masters for legal assistance. Masters had similar kickback schemes with other police officers in the area. Keating entered the picture in 1972, two years after Corbitt. Between then and August 1984 Masters was the middleman in a scheme in which illegal book-

makers in Cicero, Illinois bribed Keating and officers under Keating's command to leave them alone.

In 1981 Masters discovered that his wife, Dianne, was having an affair. He asked a friend in the Cook County Sheriff's Police Department who would be in charge of any investigation arising out of events at Masters' home, and was disappointed when told that it would not be Keating. In January 1982 Dianne Masters hired a lawyer to file for a divorce. She let it be known that she hoped to obtain custody of her and Masters' four-year-old daughter. Masters hired a former police officer, Ted Nykaza, to install recording equipment in the Masters household for the purpose of eavesdropping on telephone conversations between Dianne and her paramour. Listening, with Nykaza and a Cook County Sheriff's Police sergeant, to one of the recorded conversations, Masters thought he heard Dianne and her paramour reminisce about the paramour's inserting a wine bottle into Dianne's vagina as part of their sex play. Masters exploded with anger and declared that he would have Dianne killed. Later he told a friend that he would ask Keating to kill her. Keating offered a former Cook County Sheriff's Police officer $25,000 to kill Dianne on Masters' behalf, explaining that Corbitt was unwilling to do the killing himself but had agreed to dispose of the body.

Dianne Masters disappeared in the early morning of March 19, 1982. Her body was recovered from the trunk of her car nine months later when the car was discovered submerged in a canal near Willow Springs. She had been beaten and shot. Probably Corbitt had driven the car into the canal, though the jury's findings on this point are ambiguous. In the following months Keating used his position in the Cook County Sheriff's Police Department to obstruct the investigation of Dianne Masters' disappearance. Masters collected the proceeds of a $100,000 policy on Dianne's life. No one was ever charged with the murder.

The jury found that Masters had planned and solicited the murder of Dianne, that Keating had aided and abetted

Masters' planning and solicitation, that Keating had obstructed the investigation, that (subject to our earlier qualification) Corbitt had sunk the car in the canal, and that all three defendants had agreed to conceal their actions relating to Dianne's murder indefinitely.

There is no question that the jury found, on sufficient and indeed abundant evidence, that defendants Masters and Keating committed, and all three defendants conspired to commit, two or more criminal acts that constitute "racketeering activity" within the meaning of the RICO statute. There were many distinct acts of bribery, criminal solicitation, and other crimes that come within the broad statutory definition of racketeering activity. The questions relate to the statutory requirements of "enterprise" and of "pattern." The alleged enterprise is an informal consortium of a law firm and two police departments with the three individuals who are the defendants. The defendants argue that a RICO enterprise, unless it is a legal entity such as an individual, a partnership, or a corporation, can only be a "union or group of *individuals*" (emphasis added), which Masters' law firm, the Willow Springs Police Department, and the Cook County Sheriff's Police Department are not. The argument has repeatedly and we think correctly been rejected, illustrative decisions being *United States v. Feldman*, 853 F.2d 648, 655 (9th Cir. 1988), and *United States v. Perholtz*, 842 F.2d 343, 352-53 (D.C. Cir. 1988) (per curiam). The statute says " 'enterprise' includes"—not " 'enterprise' means." The point of the definition is to make clear that it need not be a formal enterprise; "associated in fact" will do. Surely if three individuals can constitute a RICO enterprise, as no one doubts, then the larger association that consists of them plus entities that they control can be a RICO enterprise too. Otherwise while three criminal gangs would each be a RICO enterprise, a loose-knit merger of the three, in which each retained its separate identity, would not be, because it would not be an association of individuals. That would make no sense.

The next question is whether the acts of this enterprise formed a pattern. That rarely is a problem with a criminal enterprise, as distinct from a lawful enterprise that commits occasional criminal acts. The business of a criminal enterprise is crime. The crimes form a pattern defined by the purposes of the enterprise. *United States v. Pungitore*, 910 F.2d 1084, 1104 (3d Cir. 1990); *United States v. Anguilo*, 897 F.2d 1169, 1180 (1st Cir. 1990); *United States v. Indelicato*, 865 F.2d 1370, 1383 (2d Cir. 1989) (en banc) ("two racketeering acts that are not directly related to each other may nevertheless be related indirectly because each is related to the RICO enterprise"). The main purpose of the enterprise in this case was to bring under Masters' influence (for a price of course) the principal police agencies operating in his area of activity. He used this influence to obtain law business and to protect his clients. Like many a small businessman, legal and illegal, Ianni, A Family Business: Kinship and Social Control in Organized Crime 112, 127, 142 (1972), he did not make a rigid division between his business and his personal affairs. So when his wife's adultery and projected divorce brought about a personal crisis that he believed could best be resolved through murder, it was natural for him to "hire" his own criminal enterprise to help with the job. If it could protect bookmakers, maybe it could protect a murderer.

A criminal enterprise is more, not less, dangerous if it is versatile, flexible, diverse in its objectives and capabilities. Versatility, flexibility, and diversity are not inconsistent with pattern. The systematic corruption of law enforcement in the west Chicago suburbs brought about by the Masters enterprise could be used for a variety of purposes without destroying the integrity, the rationale, of the enterprise. The acts of a criminal enterprise within the scope of the enterprise's evolving objectives form pattern enough to satisfy the requirements of the RICO statute.

The most difficult issue relating to enterprise and pattern in this case is whether the two are separate. If the "enterprise" is just a name for the crimes the defendants

committed, or for their agreement to commit these crimes that was charged separately in the conspiracy count, then it would not be an enterprise within the meaning of the statute. *United States v. Turkette*, 452 U.S. 576, 583 (1981); *United States v. Neapolitan*, 791 F.2d 489, 500 (7th Cir. 1986). Otherwise two statutory elements—enterprise and pattern—would be collapsed into one. The jury was properly instructed, however, that it had to find that the informal enterprise consisting of the three defendants and the three organizations that they controlled or manipulated existed as an organization with a structure and goals separate from the predicate acts themselves, and we cannot say that the jury's finding that it had such existence was without rational support in the record. The strongest evidence is the handling of the problem of dealing with Dianne Masters. When that problem arose, a loose-knit but effective criminal organization was in place ready to respond effectively by planning and carrying out a detection-proof crime that would have been beyond the capacities of the individual defendants acting either singly or without the aid of their organizations.

Criminal enterprises have less structure than legal ones. For formal relationships created by contract and rule they substitute informal relationships based on kinship and friendship. Ianni, *supra*, at 154, 157, 172. It would be ironic if the RICO statute, aimed primarily at criminal enterprises such as the Mafia and its many petty imitators, was more effective against legal enterprises because the latter have a more perspicuous, articulated structure.

Despite the admitted elusiveness of the statutory terms, well illustrated by the preceding discussion, we do not agree with the defendants that, as applied to their activities, the statute is unconstitutionally vague. *United States v. Glecier*, No. 88-3417, slip op. at 2 n. 1 (7th Cir. Jan. 8, 1991). Provided the statutes criminalizing the predicate acts are not unconstitutionally vague—and no one argues they are—the defendants are on adequate notice that they are committing crimes, and the fact that they may not be aware of the extent of their criminality and consequent

exposure to punishment is a detail (the original conception of RICO as a sentence-enhancement provision is pertinent here). So at least *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 58 (1989), appears to hold, although a narrower reading is proposed in *United States v. Pungitore, supra*, 910 F.2d at 1103 n. 15. But forget *Fort Wayne Books* and the decision in this case must still be the same. The interpretive problems and resulting vagueness that afflict the RICO statute come from its application to lawful enterprises that commit occasional criminal acts. The miniature suburban mafia that the facts of this case disclose is within the statute's core.

The remaining issues raised by these appeals form a miscellany—not a pattern.

1. The issue of whether Judge Zagel should have recused himself under 28 U.S.C. § 455(a) because he was chief of the Illinois state police at the time it investigated (but failed to solve) Dianne Masters's murder was waived because not raised in an action for mandamus. *United States v. Troxell*, 887 F.2d 830, 833 (7th Cir. 1989).

2. The district judge did not commit reversible error in refusing to allow the defendants as part of their cross-examination of Ted Nykaza to inquire into his habit of wearing women's underwear. When Dianne Masters' body was found, it was missing its panties. At trial the defendants proposed that Nykaza had killed her because of his fetish for panties. This was hardly an impressive theory. Transvestites are not usually murderers. It is easy enough for them to buy articles of female clothing—they don't have to kill for it. In fact defense counsel were allowed to ask Nykaza about his fetish, and he acknowledged it. The judge was quite right to cut off further inquiry; the details of Nykaza's fetish would have been spicy, but peripheral to the issues because there was no suggestion that violence was an aspect of the fetish. Fed. R. Evid. 403. And if there was error here it was harmless, since it went to a charge—conspiracy to murder, as distinct from conspiracy to solicit and conceal—on which the defendants were acquitted.

3. A more difficult issue is whether the statute's five-year statute of limitations bars the conspiracy charge against Corbitt, who lost his office as Willow Springs police chief in June 1982, six years before the indictment was handed down. We think not. Among the elements of the conspiracy with which Corbitt was charged was that he had agreed with the other two defendants "to conceal their actions involving the murder of Dianne Masters and . . . to participate in such concealment indefinitely." The defendants do not deny that if there was such an agreement it was still in force five years before the indictment. The jury found that such an agreement existed and that Corbitt was a party to it, and the evidence supports these findings.

It is true that *Grunewald v. United States*, 353 U.S. 391 (1957), and earlier cases cited in it such as *Krulewitch v. United States*, 336 U.S. 440 (1949), hold that efforts to conceal a conspiracy are not automatically a part of the conspiracy. But we do not understand these cases to hold that a conspiracy can never include an agreement to conceal the defendants' conduct. The distinction is between the government's attempting to infer the existence of a conspiracy to conceal "from circumstantial evidence showing merely that the conspiracy was kept secret and that the conspirators took care to cover up their crime in order to escape detection and punishment," *Grunewald v. United States*, *supra*, 353 U.S. at 402, and "an express original agreement among the conspirators to continue to act in concert in order to cover up, for their own self-protection, traces of the crime after its commission." *Id.* at 404. The conspirators in this case, signally including Corbitt, intended from the first to exert strenuous efforts to prevent discovery of the crime and of their involvement in it; the fact that two of the three conspirators were policemen supports the inference that concealment was part of the original conspiracy and not a spontaneous reaction to fear of arrest and prosecution. It was also a fair inference that the defendants agreed to keep trying to conceal the conspiracy for as long as they could, using their official positions where possible. And there is no

evidence that Corbitt, upon losing his position as chief of police of Willow Springs or at any other time, withdrew from the agreement. We must not forget that "withdrawal" is a term of art in the law of conspiracy. It is not enough that Corbitt ceased, "however definitively, to participate"; since he "did not communicate his abandonment to any of his co-conspirators and he did not make a clean breast to the authorities," he did not withdraw. *United States v. Patel*, 879 F.2d 292, 294 (7th Cir. 1989). On the contrary, Corbitt hoped to get another chief's job in the western suburbs, the area of the conspiracy's operations, and there is no evidence of when, if ever, he ceased harboring such hopes.

4. But the very indefiniteness of the conspiracy's termination brings to the fore two serious issues with regard to sentencing.

a. The Sentencing Guidelines by their terms apply to crimes committed on or after November 1, 1987, and by interpretation to conspiracies that straddle this date. *United States v. Fazio*, 914 F.2d 950, 958-59 (7th Cir. 1990), and cases cited there. The district judge made no finding as to when the conspiracy ended. If it ended after November 1, 1987, then he should have sentenced the defendants on count two (the conspiracy count) under the Guidelines. The case must be remanded for a determination of when the conspiracy ended, and for resentencing Masters and Keating on count two if the judge finds that the conspiracy indeed ended after the Guidelines took effect. (Corbitt does not challenge his sentence, and the government has not cross-appealed.)

For guidance on remand, we consider at the parties' request whether, if the judge resentences these defendants under the Guidelines, the new sentences should be "stacked" on top of the sentences on count one. The Sentencing Guidelines provide, in section 5G1.2(d), that sentences on separate counts shall be consecutive if necessary to reach the total length of sentence prescribed by the Guidelines, which may exceed the statutory maximum on each count. We believe that this provision, whose validity

the defendants do not challenge, should govern the district judge in resentencing them on count two even though the sentence on count one is a pre-Guidelines sentence. For this is the procedure that will give maximum effect to the Guidelines within their intended domain, i.e., crimes committed after November 1, 1987.

b. There is an independent infirmity with regard to the $250,000 fine that the judge imposed on Masters, also under count two. The relevant provisions (18 U.S.C. §§ 3571, 3572, and Sentencing Guidelines § 5E1.2(d), if the conspiracy continued past November 1, 1987, and the repealed 18 U.S.C. §§ 3622, 3623 if it ended before) require the sentencing judge to consider a number of specified factors before imposing a fine, such as the burden on the defendant's family. 18 U.S.C. §§ 3622(a)(4) (repealed), 3572(a)(2). The judge made no findings with respect to any of these factors, and he must do so on remand before imposing a fine.

5. The jury ordered the defendants to forfeit $42,000 as "proceeds which the person [i.e., the defendant] obtained . . . in violation of" the RICO statute. 18 U.S.C. § 1963(a)(3). This is joint and several liability, *Fleischhauer v. Feltner*, 879 F.2d 1290, 1301 (6th Cir. 1989); *United States v. Caporale*, 806 F.2d 1487, 1506-09 (11th Cir. 1986), meaning that $42,000 is the cap on the total amount that the government can collect but that subject to the ceiling each defendant is liable for the full amount. Masters and Keating argue that the government computed this figure (which the jury accepted) by adding up the amounts paid to Masters, in legal fees and bribes, by persons whom the criminal enterprise assisted, whether by fixing their cases or by protecting them from the law. Masters in particular argues that this amount must be an overestimate of the proceeds he obtained, since he forwarded some of the bribe money to his coconspirators and other police officers, and since some at least of the legal fees were not bribes at all but payment for lawful legal services.

In fact the government presented the jury with evidence that Masters had obtained at least $66,000 in fees and bribes from the persons whom the enterprise assisted.

The government wanted the jury to find that about two-thirds represented bribes received by these defendants; and this was a reasonable estimate. The problem is that Masters did not keep all those bribes, yet he was made jointly and severally liable for the entire amount. Most but not all of the bribes that he passed on ended up in the pockets of his codefendants, but again they were found jointly and severally liable for the entire amount.

The statute is designed to force criminals to disgorge their ill-gotten gains. We may assume, therefore, as intimated in *Russello v. United States*, 464 U.S. 16, 22 (1983), that the proceeds to which the statute refers are net, not gross, revenues—profits, not sales, for only the former are gains. *United States v. Lizza Industries, Inc.*, 775 F.2d 492, 498 (2d Cir. 1985), came out the other way and allowed the recovery of gross proceeds, but the court made no effort to square its reading with the language of the statute. Furthermore, the statute says that it is the proceeds received by the defendants, not by their enterprise, that are forfeitable.

But the jury was properly instructed on these issues, and $42,000 was a reasonable estimate of the total amount that the three defendants kept from the bribes that Masters received. The fact that Masters did not keep the whole amount is irrelevant given the jointness of each of the defendants' liability. Each is fully liable for the receipts of the other members of the enterprise, subject to the overall ceiling of $42,000.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED.

A true Copy:

Teste:

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*Clerk of the United States Court of Appeals for the Seventh Circuit*

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT—WITH ORAL ARGUMENT

Date: February 6, 1991

BEFORE: Honorable William J. Bauer, Chief Judge
Honorable Richard A. Posner, Circuit Judge
Honorable Michael S. Kanne, Circuit Judge

Nos. 89-2581, 89-2872 and 89-2873

UNITED STATES OF AMERICA,

*Plaintiff-Appellee*

v.

ALAN MASTERS, MICHAEL J. CORBITT, and JAMES D. KEATING,

*Defendants-Appellants*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 88 CR 500, Judge James B. Zagel

These causes were heard on the record from the above mentioned district court, and were argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court in these causes appealed from be, and the same are hereby, AFFIRMED in part, VACATED in part, and REMANDED, in accordance with the opinion of this Court filed this date.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Plaintiff, | ) | |
| v. | ) | No. 88 CR 500 |
| ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING, Defendants. | ) | Honorable James B. Zagel |

MEMORANDUM ORDER

Alan Masters contends that Counts I and II of the indictment against him are defective. These counts allege violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. secs. 1961-1968 (RICO). Masters argues that the government has not alleged the existence of an "enterprise" within the meaning of RICO. We see it otherwise.

RICO defines "enterprise" as "includ[ing] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Sec. 1961(4). The enterprise alleged in the present indictment consists of an association-in-fact among the three defendants (Masters, Corbitt and Keating), Masters's law practice (a professional corporation), the Cook County Sheriff's Department, and the Willow Springs Police Department. It is thus composed of three individuals and three corporations. Masters contends that such an enterprise is not provided for by RICO. Individuals—and individuals alone—can make up an

association-in-fact "enterprise." Anything else spoils the RICO stew.

Masters's construction is not inevitable. Indeed, several Courts of Appeals have rejected it. See *United States v. Huber*, 603 F.2d 387 (2d Cir. 1979); *United States v. Aimone*, 715 F.2d 822 (3d Cir. 1983); *United States v. Thevis*, 665 F.2d 616 (5th Cir. 1982); *United States v. Caporale*, 806 F.2d 1487 (11th Cir. 1986). Although the Seventh Circuit has not confronted the issue in the criminal context, it has rejected this construction in the civil context. See *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1285 (7th Cir. 1983). The distinction between civil and criminal cases, according to Masters, however, is crucial, for he relies on the so-called "rule of lenity", which provides that ambiguity in criminal statutes "should be resolved in favor of lenity." *Bell v. United States*, 349 U.S. 81, 83 (1955) (Frankfurter, J.). And, Masters urges, the definition of "enterprise" is ambiguous at best.

Masters's position possesses some textual basis. The definition of enterprise states that a "union or group of individuals" may constitute an association-in-fact for purposes of RICO; it makes no such provision for groups of other entities such as partnerships or corporations. One could plausibly argue, therefore, as Masters does, that the definition's specification of "individuals" implicitly excludes other types of entities. "Had [Congress] intended to include [other types of entities as associations-in-fact], Congress could have simply inserted the words 'corporation or other legal entities' after the word 'individuals' " in the phrase addressing associations-in-fact. *United States v. McClendon*, No. LR-CR-88-58, slip op. at 13 (E. D. Ark. Dec. 7, 1988 (cited by Masters). But this argument is inconclusive, for the use of the term "includes" might in-

dicate that the juridical entities listed in sec. 1961(4) are illustrative rather than exhaustive. See, e.g., *Huber*, 603 F.2d at 394, citing *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 99-100 (1941).

Masters is correct, then, that the definition of "enterprise" is open to more than one reasonable interpretation; he is wrong, however, in concluding that the existence of this ambiguity is sufficient to justify application of the rule of lenity. "The rule of lenity, like other canons of construction, extends no further than the functions it serves. It does not preclude the implementation of the criminal law every time a statute needs construction, for all enactments require elucidation." *United States v. Palmer*, 864 U.S. 524, 527 (7th Cir. 1988). Thus, "[t]he rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan v. United States*, 364 U.S. 587, 596 (1961) (Frankfurter, J.). Thus, although the definition of "enterprise" requires construction, the need for construction does not require applying the rule of lenity.

The rule serves "to promote fair notice to those subject to the criminal laws, to minimize the risk of selective or arbitrary enforcement, and to maintain the proper balance between Congress, prosecutors, and courts." *United States v. Kozminski*, 108 S. Ct. 2751, 2764 (1988). Given that one of the rule's purposes is to maintain the proper role of the Judiciary in a system of government in which laws are enacted by the legislative and executive branches, *Dowling v. United States*, 473 U.S. 207, 213-14 (1985), it follows that the rule should not be used to thwart the implied or expressed intent of Congress, *Liparota v. United States*, 471 U.S. 419, 427 (1985). And that is precisely what would result if we should follow the path

urged by Masters. There is no doubt that Congress sought to ferret out and extirpate organized crime in all its forms. See, e.g., Congress' Statement of Findings, 84 Stat. 923 (Congress sought "the eradication of organized crime in the United States"). We therefore agree with the Second Circuit that "[t]here is no reason to believe that Congress cared what form such infiltration took, except to indicate by an abundance of caution in listing the examples in the definition of enterprise that all such harmful infiltration, regardless of form should be eradicated." *Huber*, 603 F.2d at 394. In the final analysis, Masters's construction is at loggerheads with RICO's governing purpose, and therefore we reject it. See, e.g., *United States v. Broum*, 333 U.S. 18, 25-26 (1948); *United States v. Stewart*, 865 F.2d 115, 118 (7th Cir. 1988) (rule of lenity does not require courts to construe statute in manner that "defeat[s] the obvious intention of Congress"); *United States v. Drasen*, 845 F.2d 731, 738 (7th Cir. 1988) ("[T]he principle of lenient construction does not require a court to ignore the obvious intention of the legislature in enacting the statute.").

Nor do we think the defendants will be deprived of fair notice of the criminality of their conduct. There would be no question that an enterprise existed if it consisted only of Masters, Corbitt and Keating. It makes little sense to hold that their conduct slipped through RICO's grasp simply because corporate entities also were involved. And it is nothing short of inconceivable that the defendants did not have fair notice that the acts alleged in the indictment (murder, bribery, and mail fraud) were subject to the criminal laws: each of these acts is a violation of state or federal law independent of RICO, see 18 U.S.C. sec. 1961(1). (Masters makes no argument regarding the variance in penalties for convictions of the predicate acts

as opposed to a conviction for violating RICO. And maybe for good reason. Under Illinois law, a conviction of murder in the circumstances alleged here carries a potential penalty of death, *see* Ill. Rev. Stat. ch. 38, para. 9-1(b) (1979 & 1988 Supp.), which even RICO cannot match, see 18 U.S.C. sec. 1963.)

Finally, there is, as far as we can see, no danger of encouraging selective or arbitrary enforcement of RICO by construing the definition of "enterprise" to include associations-in-fact that are comprised of entities other than individuals. We hold that the words of sec. 1961(4), given their fair meaning in light of Congress' purpose in enacting this statute, reach the enterprise alleged in the present indictment. Masters's motion for reconsideration is denied.[1]

Enter:

/s/ James B. Zagel
James B. Zagel
United States District Judge

Date: 12 May 1989

[1] Masters argues that Counts I and II also should be dismissed because the government has failed to allege adequately facts describing the enterprise's structure. Even so, the factual questions surrounding the existence and structure of the enterprise will be resolved in the first instance by the jury. See *United States v. Riccobene*, 709 F.2d 214, 222 (3d Cir. 1983).

[FILED JUNE 13, 1988]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | No. 88CR0500 |
| v. | ) | VIOLATIONS: |
| | ) | Title 18, United |
| ALAN MASTERS, | ) | States Code, Sections |
| MICHAEL J. CORBITT and | ) | 1962(c), 1962(d), |
| JAMES D. KEATING | ) | and 1341 |

## COUNT ONE

The SPECIAL DECEMBER 1986 GRAND JURY charges:

1. At the times material to this Indictment, or at the times otherwise indicated:

## BACKGROUND

(a) Defendant ALAN MASTERS was an attorney who practiced law through the Law Offices of Alan Masters P.C., Summit, Illinois.

(b) Defendant ALAN MASTERS was the husband of Dianne G. Masters until her death on or about March 19, 1982.

(c) The Willow Springs Police Department was duly authorized, empowered, and required by law to enforce and uphold the laws of the State of Illinois and to investigate violations of those laws.

(d) Defendant MICHAEL J. CORBITT was employed as Chief of Police by the Willow Springs Police Depart-

ment until in or about June 1982, and through that time he was accordingly sworn to enforce and uphold the laws of the State of Illinois.

(e) The Cook County Sheriff's Police Department was duly authorized, empowered, and required by law to enforce and uphold the laws of the State of Illinois and to investigate violations of those laws.

(f) Defendant JAMES D. KEATING was a Lieutenant employed by the Cook County Sheriff's Police Department until in or about May 1986, and through that time he was accordingly sworn to enforce and uphold the laws of the State of Illinois.

(g) At the time of her death on or about March 19, 1982 Dianne G. Masters was a member of the Governing Board of the Moraine Valley Community College in Palos Hills, Illinois.

(h) According to the terms of the Last Will and Testament of Dianne G. Masters, upon her death, her real and personal property, including her jewelry, would and did pass to defendant ALAN MASTERS.

(i) The Hartford Accident and Indemnity Company ("the Hartford") was an insurance company with its headquarters in or near Hartford, Connecticut, and with local offices in Illinois, including offices in Joliet and Elmhurst. The Hartford provided various types of insurance policies through various insurance agencies, including the Payan-Stitt Insurance Agency in Palos Heights, Illinois. Through the Payan-Stitt Insurance Agency, the Hartford provided an insurance policy to the Moraine Valley Community College, which policy provided approximately $100,000 in certain Accidental Death coverage to members of the Governing Board of the Moraine Valley Community College, including Dianne G. Masters.

(j) Under the terms of the Hartford Accidental Death policy provided for the members of the Governing Board of the Moraine Valley Community College, each member of the Governing Board, including Dianne G. Masters, was covered by $100,000 in insurance while traveling to and from any official activity, including meetings of the Governing Board; accordingly, such coverage terminated upon a Board member's return to the confines of his or her residential property following any such Board meeting.

(k) Defendant ALAN MASTERS was the beneficiary of the Hartford Accidental Death policy covering Dianne G. Masters as a member of the Governing Board of the Moraine Valley Community College.

## THE ENTERPRISE

(l) Defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING, and the Law Offices of Alan Masters, P.C., the Willow Springs Police Department, and the Cook County Sheriff's Police Department formed and were an association-in-fact and constituted an enterprise as that term is defined in Title 18, United States Code, Section 1961(4), the activities of which affected interstate commerce. That enterprise was on-going and had a structure that maintained operations directed towards achievement of its economic and other goals.

## ILLINOIS LAW

(m) Under the common law of the State of Illinois, a person responsible for the murder of another was barred from collecting, as beneficiary, the proceeds of any insurance policy covering the life of the victim.

(n) There were in force and effect criminal statutes of the State of Illinois, Illinois Revised Statutes, Chapter 38, involving the aiding and abetting of criminal offenses, the solicitation of criminal offenses, and conspiracy to commit criminal offenses. Those statutes stated, in relevant parts, as follows:

(1) Section 5-2: A person is legally accountable for the conduct of another when: . . . [e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.

(2) Section 8-1: A person commits solicitation when, with intent that an offense be committed, he commands, encourages or requests another to commit that offense.

(3) Section 8-2: A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or by a co-conspirator.

(o) There was in force and effect a criminal statute of the State of Illinois involving murder, Illinois Revised Statutes, Chapter 38, Section 9-1, and the violation of that statute was punishable by imprisonment for more than one year. That statute stated, in relevant part, as follows:

> Section 9-1: A person who kills an individual without justification commits murder if, in performing the acts which cause the death: . . . [h]e either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another.

(p) There was in force and effect a criminal statute of the State of Illinois involving concealment of a homicidal death, Illinois Revised Statutes, Chapter 38, Section 9-3.1, and the violation of that statute was punishable by imprisonment for more than one year. That statute stated, in relevant part, as follows:

> Section 9-3.1: A person commits the offense of concealment of homicidal death when he conceals the death of any other person with knowledge that such other person has died by homicidal means.

(q) There were in force and effect criminal statutes of the State of Illinois involving bribery, Illinois Revised Statutes, Chapter 38, Sections 33-1 and 33-3, and the violation of either of those statutes was punishable by imprisonment for more than one year. Those statutes stated, in relevant parts, as follows:

(1) Section 33-1: A person commits bribery when:

> (a) With intent to influence the performance of any act related to the employment or function of any public officer [or] public employee . . . he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept; or . . .
>
> (d) He receives, retains or agrees to accept any property or personal advantage which he is not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer [or] public employee . . ; or
>
> (e) He solicits any property or personal advantage which he is not authorized by law to accept pursuant to an understanding that he shall influence the performance of any act related to the employment or function of any public officer [or] public employee . . . .

(2) Section 33-3: A public officer or employee commits misconduct when, in his official capacity, he . . . [s]olicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

## FEDERAL LAW

(r) There was in force and effect a criminal statute of the United States involving mail fraud, Title 18, United States Code, Section 1341. That statute stated, in relevant part, as follows:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, . . . any such matter or thing, shall be [punished according to law].

## CONDUCT OF THE ENTERPRISE'S AFFAIRS

2. From in or about October 1970 to in or about August 1984, at Summit, Palos Park (Cook County), Willow Springs, Maybrook, Orland Park, Oak Lawn, and Chicago, Illinois, in the Northern District of Illinois, Eastern Division, and elsewhere,

ALAN MASTERS and
JAMES D. KEATING,

defendants herein, who were persons associated with an enterprise that engaged in and the activities of which af-

fected interstate commerce, namely, the enterprise described in subparagraph 1(l) of this Court of this Indictment, knowingly conducted and participated, directly and indirectly, in the conduct of that enterprise's affairs through a pattern of racketeering activity, that is, violations of the Illinois aiding and abetting, solicitation, conspiracy, murder, concealment-of-homicidal death, and bribery statutes, respectively, Chapger 38, Illinois Revised Statutes, Sections 5-2, 8-1, 8-2, 9-1, 9-3.1, 33-1 and 33-3; and the federal mail-fraud statute, Title 18, United States Code, Section 1341, as more fully set forth below in paragraphs 3 to 7 of this Count.

PATTERN OF RACKETEERING ACTIVITY

Racketeering Activity Number One

3. From in or about October 1970 to in or about June 1982, at Willow Springs and Summit and elsewhere in Illinois, defendants ALAN MASTERS and MICHAEL J. CORBITT committed bribery in violation of Illinois Revised Statutes, Chapter 38, Sections 33-1 and 33-3, in that defendant ALAN MASTERS, with the intent to influence the performance of acts related to the employment and function of defendant MICHAEL J. CORBITT as Chief of Police in Willow Springs, tendered to defendant MICHAEL J. CORBITT, and defendant MICHAEL J. CORBITT solicited, received, retained, agreed to accept, and knowingly accepted, regular payments of money that defendant MICHAEL J. CORBITT was not authorized by law to accept and that defendant MICHAEL J. CORBITT knew were tendered to and solicited, received and accepted by him with the intent that, in violation of the laws of the State of Illinois, he would refer criminal, traffic violation, accident and other Willow Springs Police

Department matters to defendant ALAN MASTERS so that defendant ALAN MASTERS could and would then act as a paid attorney as to those matters through the Law Offices of Alan Masters, P.C.

Racketeering Activity Number Two

4. In or about May 1979, at Orland Park, Summit, Maybrook, Oak Lawn and elsewhere in Illinois, defendant ALAN MASTERS committed bribery in violation of Illinois Revised Statutes, Chapter 38, Section 33-1, in that, with the intent to influence the performance of acts related to the employment and function of Cook County Sheriff's Police Department officers under the command of defendant JAMES D. KEATING, defendant ALAN MASTERS tendered to those officers, and those officers solicited, received, retained, agreed to accept, and knowingly accepted, approximately $5,000 that those officers were not authorized by law to accept and that the officers knew was tendered to and solicited, received and accepted by them with the intent that, in violation of the laws of the State of Illinois, they would (a) participate in the "fixing" and dismissal of state criminal charges against Lawrence R. Camerano, who was represented by defendant ALAN MASTERS and the Law Offices of Alan Masters, P.C.; and (b) return to Lawrence R. Camerano certain property seized by those officers incident to his arrest on or about May 4, 1979.

Racketeering Activity Number Three

5. In or about March and April 1981, at Willow Springs, Summit, Maybrook, Oak Lawn and elsewhere in Illinois, defendants ALAN MASTERS and MICHAEL J. CORBITT committed bribery and aided and abetted bribery in

violation of Illinois Revised Statutes, Chapter 38, Sections 5-2, 33-1 and 33-3, in that, with the intent to influence the performance of acts related to the employment and function of Cook County Sheriff's Police Department officers under the command of defendant JAMES D. KEATING, and with the aid of defendant MICHAEL J. CORBITT, defendant ALAN MASTERS tendered to those officers, and those officers, with the aid of defendant MICHAEL J. CORBITT, solicited, received, retained, agreed to accept, and knowingly accepted, some part of approximately $12,000 that those officers were not authorized by law to accept and that those officers knew was tendered to and solicited, received and accepted by them with the intent that, in violation of the laws of the State of Illinois, they would (a) participate in the "fixing" and dismissal of state criminal charges against Fred Kuhnke, who was represented by defendant ALAN MASTERS and the Law Offices of Alan Masters, P.C.; and (b) return to Fred Kuhnke certain property seized by the officers incident to his arrest on or about March 25, 1981.

Racketeering Activity Number Four

6. From in or about 1972 to in or about August 1984, at Summit, Maybrook and elsewhere in Illinois, defendants ALAN MASTERS and JAMES D. KEATING committed bribery in violation of Illinois Revised Statutes, Chapter 38, Sections 33-1 and 33-3, in that, with the intent to influence the performance of acts related to the employment and function of defendant JAMES D. KEATING and other Cook County Sheriff's Police Department officers, defendant ALAN MASTERS tendered to defendant JAMES D. KEATING and to those other officers, and defendant JAMES D. KEATING and those officers solicited, received, retained, agreed to accept, and knowingly accepted, approximately $300 in cash each month, which

money defendant JAMES D. KEATING and those other officers were not authorized by law to accept and which defendant JAMES D. KEATING and those other officers knew was tendered to and solicited, received and accepted by them with the intent that, in violation of the laws of the State of Illinois, they would "protect" and not arrest or raid certain illegal gambling operators and bookmakers in or near Cicero, Illinois.

Racketeering Activity Number Five

7. From sometime in 1981 to on or about December 11, 1982, at Palos Park (Cook County), Summit, Willow Springs, Maybrook and elsewhere in Illinois, defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING committed acts and participated in acts involving a murder, in violation of Illinois Revised Statutes, Chapter 38, Sections 5-2, 8-1, 8-2, 9-1 and 9-3.1, as follows:

(a) From sometime in 1981 to on or about March 19, 1982, defendant ALAN MASTERS planned and solicited the murder of Dianne G. Masters; defendant MICHAEL J. CORBITT aided and abetted the planning of the murder of Dianne G. Masters; and defendant JAMES D. KEATING aided and abetted the solicitation and planning of the murder of Dianne G. Masters.

(b) From sometime in 1981 to on or about March 19, 1982, defendant ALAN MASTERS conspired with others to murder, and procured and aided and abetted the murder of Dianne G. Masters.

(c) From on or about March 19, 1982 to on or about December 11, 1982, defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING acted to conceal the homicidal death of Dianne G. Masters and participated in the concealment of the murder of Dianne G. Masters, and the facts surrounding that mur-

der, from various law enforcement agencies and from others.

Racketeering Activity Number Six

8. From on or about January 24, 1983 to on or about June 24, 1983, at Chicago, Palos Hills, Joliet and elsewhere in Illinois, defendant ALAN MASTERS devised and intended to devise a scheme to defraud the Hartford, as more fully set forth in paragraphs 1 to 4 of Count Three of this Indictment, the allegations of which are incorporated here by reference; and in furtherance of that scheme, and in violation of Title 18, United States Code, Section 1341, defendant ALAN MASTERS caused (a) a June 22, 1983 mailing of a claim-approval memorandum to the Hartford office in Joliet, as more fully charged in paragraph 5 of Count Three of this Indictment; (b) a June 24, 1983 mailing of a $100,000 check to a Chicago attorney, as more fully charged in paragraph 2 of Count Four of this Indictment; and (c) various other related mailings, including:

(1) a January 24, 1983 mailing of a letter requesting a Beneficiary Designation Form from a Chicago attorney to the Moraine Valley Community College in Palos Hills; and

(2) a February 1, 1983 mailing of an Affidavit of Beneficiary from a Chicago attorney to the Moraine Valley Community College in Palos Hills; and

(3) a March 2, 1983 mailing of a certified Death Certificate from a Chicago attorney to the Moraine Valley Community College in Palos Hills; and

(4) a May 26, 1983 mailing of a Reserve Memo and summary investigative report from Hartford's office in Joliet to its headquarters in Connecticut.

All in violation of Title 18, United States Code, Section 1962(c).

## COUNT TWO

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Indictment as if fully set forth here.

2. From in or about October 1970 to on or about the date of the return of this Indictment, in Palos Park (Cook County), Summit, Willow Springs, and Maybrook, Illinois, and elsewhere in the Northern District of Illinois, Eastern Division,

ALAN MASTERS,
MICHAEL J. CORBITT and
JAMES D. KEATING,

defendants herein, who were persons associated with an enterprise that engaged in and the activities of which affected interstate commerce, namely, the enterprise described in subparagraph 1(l) of Count One of this Indictment, knowingly conspired and agreed with each other, and with others known and unknown to the Grand Jury, to conduct and participate, directly and indirectly, in the conduct of that enterprise's affairs through a pattern of racketeering activity, which pattern of racketeering activity is set forth in paragraphs 3 to 8 of Count One of this Indictment, in violation of Title 18, United States Code, Section 1962(c).

3. It was part of the conspiracy that defendants ALAN MASTERS, MICHAEL J. CORBITT, JAMES D. KEATING and their co-conspirators would commit acts of racketeering activity as specified in paragraphs 3 through

8 of Count One of this Indictment, which are realleged and incorporated here by reference, and that defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING agreed that two or more acts of racketeering activity would be committed in the conduct of the affairs of the cited enterprise.

4. It was further a part of the conspiracy that defendant ALAN MASTERS used his influence as an attorney and used the Law Offices of Alan Masters, P.C. to "fix" and otherwise control court cases arising from the police work of defendants MICHAEL J. CORBITT and JAMES D. KEATING and their two police departments, and that defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING shared in money illegally obtained from various persons in those cases and from various persons ticketed, arrested or subject to investigation by the Willow Springs Police Department and the Cook County Sheriff's Police Department.

5. It was further a part of the conspiracy that defendant ALAN MASTERS gathered information about the activities of Dianne G. Masters and provided that information to defendants MICHAEL J. CORBITT and JAMES D. KEATING, and that defendant ALAN MASTERS provided the funds needed to accomplish the murder of Dianne G. Masters and to pay for the commission of that murder.

6. It was further a part of the conspiracy that defendant JAMES D. KEATING provided defendants ALAN MASTERS and MICHAEL J. CORBITT with information about the activities of Dianne G. Masters, and that defendant JAMES D. KEATING solicited persons who would kill Dianne G. Masters in return for a $25,000 fee to be provided by defendant ALAN MASTERS.

7. It was further a part of the conspiracy that defendant MICHAEL J. CORBITT caused an automobile containing the body of Dianne G. Masters to be sunk in the Sanitary and Ship Canal in Willow Springs, Illinois.

8. It was further a part of the conspiracy that defendant MICHAEL J. CORBITT used his position as Chief of Police in Willow Springs, Illinois, to ensure that the disposal of Dianne G. Masters's automobile would not be detected by Willow Springs police officers and others.

9. It was further a part of the conspiracy that defendant JAMES D. KEATING used his position as a Lieutenant in the Cook County Sheriff's Police Department to influence, impede and obstruct the investigation by that Department into the disappearance of Dianne G. Masters and to prevent and impede the Federal Bureau of Investigation from becoming involved in an investigation of the disappearance and death of Dianne G. Masters.

10. It was further a part of the conspiracy that defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING agreed to conceal their actions involving the murder of Dianne G. Masters and agreed to participate in such concealment indefinitely.

11. It was further a part of the conspiracy that defendant ALAN MASTERS would gain the real and personal property of Dianne G. Masters, including her jewelry, upon her murder and death, pursuant to the terms of the Last Will and Testament of Dianne G. Masters. It was further a part of the conspiracy that in or about January 1983, after defendant ALAN MASTERS learned about the Hartford Accidental Death insurance policy provided to Dianne G. Masters by the Moraine Valley Community College, defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING continued to conceal the facts relating to the murder of Dianne G.

Masters, allowing defendant ALAN MASTERS (a) to collect the $100,000 proceeds of the Hartford insurance policy as the beneficiary of that policy; and (b) to retain that $100,000.

All in violation of Title 18, United States Code, Section 1962(d).

## FORFEITURES

The SPECIAL DECEMBER 1986 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates here by reference Counts One and Two of this Indictment.

2. Defendants ALAN MASTERS, MICHAEL J. CORBITT and JAMES D. KEATING obtained, directly or indirectly, from the racketeering activities and violations of Title 18, United States Code, Section 1962 set forth in Counts One and Two of this Indictment, approximately $42,000 in bribe money, $100,000 in insurance proceeds, and jewelry and other personal and real property of Dianne G. Masters, which property constitutes the proceeds of those racketeering activities and violations, thereby making all that property subject to forfeiture to the United States by the defendants, jointly and severally, pursuant to Title 18, United States Code, Section 1963(a)(3).

A TRUE BILL:

_____

FOREPERSON

_____

UNITED STATES ATTORNEY

TJS:cw
(6/13/88)